

REMARKS

Claims 1, 3-7, and 12 are now in the application. By this Amendment, claims 1 and 4-7 have been amended. Support for the claim feature “uncooked” is found at least at page 7, lines 16-18, page 8, lines 15-19, and page 10, lines 4-6, of the specification. Support for the claim feature “framed” is found at least at page 4, lines 21-22, of the specification. No new matter has been added.

Claims 1, 3-7, and 12 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite because the meaning of the claim feature “maintained” is considered unclear. Claim 1 has been amended to recite a shaped pastry dough having an edge framed between the sides of the mold and counter-mold to obviate this rejection. Further, Applicants respectfully submit that the applied citations in the rejection discussed below cannot reasonably be considered to suggest features comparable to the above-quoted features of amended claim 1.

Claims 1, 3, 4, and 12 are rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,620,731 to McKee et al. in view of U.S. Patent No. 6,365,210 to Schaible II et al.

As appreciated by the Examiner, McKee and Schaible II suggest methods of par-baking pizza, but not of a pie, quiche, or tart, as recited in independent claim 1. However, the Office Action states that the distinction between pizza dough processing and pie, quiche, or tart dough processing is not reflected in the instant claims. Applicants herewith amend the pending claims to recite that the filling is prepared as a liquid, uncooked filling. Subsequently, the filling is deep-frozen. However, when defrosted, i.e., upon completion of the baking by the consumer for consumption, the filling is again present in liquid form and the shaped pastry dough, in particular its side, contacts a liquid.

The Office Action states, at page 4, that the disclosure of McKee and Schaible II is not limited to the preparation of pizza noting that McKee, in the abstract, refers to par-baking of food-stuff. However, Applicants respectfully submits that McKee and Schaible II provide enabling disclosure only for par-baking of pizza, but not for a pie, quiche, or tart. For example, McKee suggests, at col. 5, lines 21-29, that the topping substitute for par-baking of pizza

suggested therein inhibits the migration of moisture from the top of the dough. Such a suggestion is not applicable for par-baking of a pie, quiche, or tart because in this case the dough has to release moisture such that the dough does not absorb too much water in the final baking when in contact with a liquid filling.

Although the abstracts of McKee and Schaible do not specify the making of pizzas, the disclosures are only enabling for the making of pizzas. In McKee, this is apparent from each of the paragraphs relating to the problems in the prior art (col. 1, line 56 to col. 2, line 18 and col. 4, lines 1 to 58). In Schaible II, this is apparent from the “FIELD OF THE INVENTION”, col. 1, lines 17-18, and the claims.

The Office Action states, at page 4, that the meaning of having an edge maintained between a mold and a counter-mold is considered unclear. The Office Action further states, that the pizza dough of the applied citations is handled in substantially the same manner as recited in the instant claims. Applicants’ amendments herein clarify that the dough is framed between the peripheral sides of the mold and the counter-mold. The applied citations fail to suggest comparable features. Schaible II fails to suggest features comparable to a counter-mold used during the par-baking. McKee fails to suggest that the rim of the pizza dough is supported by the pan and the topping substitute. This can be seen, for example, in Fig. 1 of McKee in which the rim supports the topping substitute without needing support from the pan. Additionally, the par-baked pizza in McKee or Schaible II cannot reasonably be considered to be shaped to form an edge. Instead, the periphery of the pizza is formed into a round rim. Moreover, the topping for pizza, having a substantially higher viscosity and being applied in a smaller thickness than a liquid, uncooked filling of a pie, a quiche, or a tart, does not have to be held in place by peripheral sidewalls. Instead, the topping remains in place even without the rim of the pizza.

Further, Applicants respectfully submit that the Office Action is not giving enough weight to the suggestion in McKee that uncovered cooking of pizza dough is undesirable. A skilled artisan would shy away from following an undesirable method of making pizza because it is not simply the goal to bake a pizza, but to bake a pizza with taste that appeals to customers. The purpose of making foodstuff is not to merely make the foodstuff but to obtain foodstuff that

meets, or exceeds, the expectation of a consumer. For a pizza, a consumer expects the base to be soft, namely not tough, dry or crispy as specifically indicated both by McKee (col. 4, lines 1-27, in particular col. 4, lines 25-26 “this thin crust of film creates a “mouth feel” which is foreign to the expectations of the pizza consumer”) and by Schaible II (col. 2, lines 22-24 and 29-31). By contrast, for a pie, quiche or tart, a consumer expects the base to be crispy despite the fact that it is baked with liquid filling.

In the claimed process, the part-baking is carried out with the dough framed between a mold and a counter-mold, the latter having perforations to allow steam to evaporate, namely to cause the dough to dehydrate. The counter-mold cannot be held as equivalent to the topping substitute or cover of McKee. As clearly stated in col. 5, lines 21 to 29 of McKee, the topping substitute must act as a “moisture vapour barrier inhibiting the migration of moisture from the top of the dough”, this being “critical” (col. 5, line 21). Although apertures may be provided to allow the passage of air in order to avoid flapping or movement of the topping substitute (cover), as indicated in col. 5, lines 43-50, the basic function of the topping substitute (cover) is to prevent substantial dehydration of the dough.

Applicants maintain that McKee and Schaible II cannot be combined in the manner suggested. Schaible II rejects part-baking of the dough provided with a cover (col. 7, lines 1-5 “expenses in providing covers,... high labor costs in placing and removing such covers...”). In the process of Schaible II, the entire top surface of the dough is hydrated by imparting steam onto the surface (col. 18, lines 54-62), which excludes covering the dough, and the hydrated doughs enter the oven for part-baking “immediately” upon exiting the steamer (col. 21, lines 11-12). Providing dough with a cover for part-baking is not only held undesirable by Schaible but is also not possible because it would prevent the steam treatment.

In summary, McKee and Schaible wish to obtain a part-baked dough retaining a substantial amount of moisture. This is achieved by McKee by covering the dough to prevent migration of moisture from the original dough. In Schaible II, this is achieved by imparting steam to increase the moisture content before part-baking and avoid having to use a cover. The passage referred to by the Office Action, i.e., col. 7, lines 19-25, of Schaible II, merely states

that a prior art two-step pizza cooking with a part-baking of the dough without cover produces a less desirable result than a traditional one-step pizza cooking. The object of Schaible is to find a way to achieve such a desirable result in a two-step cooking process but still without using a cover.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKee in view of Schaible II and in further view of US 5,256,432 to McDonald et al.

The Office Action relies on McDonald for suggesting providing a deep-frozen pizza topping for par baked dough. McDonald is not applied in a manner to cure the deficiencies of McKee and Schaible II discussed above.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 22193-00007-US from which the undersigned is authorized to draw.

Dated: April 19, 2010

Respectfully submitted,

Electronic signature: /Georg M. Hasselmann/
Georg M. Hasselmann
Registration No.: 62,324
CONNOLLY BOVE LODGE & HUTZ LLP
1875 Eye Street, NW
Suite 1100
Washington, DC 20006
(202) 331-7111
(202) 293-6229 (Fax)
Attorney for Applicant